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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

5 v.

11 Cr. 559

6 AHMED ABDULKADIR WARSAME,

7 Defendant.

8 -----X

10 December 21, 2011
4:30 p.m.

11 Before:

12 HON. COLLEEN McMAHON,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BENJAMIN NAFTALIS,

ADAM HICKEY,

Assistant United States Attorneys

18 PRIYA CHAUDHRY, ESQ.

19 Attorney for Defendant

20 ALSO PRESENT: ABASS GOFFREY (FBI)
21 STEFANIE RODDY (FBI)

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1 (Case called)

2 MR. NAFTALIS: Benjamin Naftalis, Adam Hickey for the
3 government. We are joined by Special Agents Abass Goffrey and
4 Stefanie Roddy from the FBI.

5 MS. CHAUDHRY: Good afternoon, Priya Chaudhry, for
6 Mr. Warsame, who is present in custody and standing to my left.

7 THE COURT: Good afternoon.

8 All right, this matter is on for conference and I
9 believe we are going to have a plea, is that correct?
10 Mr. Naftalis?

11 MR. NAFTALIS: That is our understanding.

12 THE COURT: The record should reflect that the court
13 has granted the government's application made yesterday and
14 renewed this morning for an order directing that the courtroom
15 be closed; that the transcript of this plea and the defendant's
16 plea agreement be sealed and the docketing of this guilty plea,
17 should a guilty plea ultimately be entered, be delayed all
18 until further order of this court. The court's order provides
19 that the government is to report every 90 days after the
20 execution of this order regarding the continuing need to
21 maintain these matters under seal, and I would appreciate in
22 particular being apprised of any developments in a case
23 presently pending before another judge of this court which is
24 scheduled for trial at some point in the foreseeable future.

25 Okay.

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1 Ms. Chaudhry, is it in fact the case that your client
2 wishes to enter a plea of guilty to certain counts in the
3 indictment against him?

4 MS. CHAUDHRY: Yes, your Honor. It's our intention to
5 withdraw Mr. Warsame's not guilty plea to all 9 counts and
6 instead enter a guilty plea to all 9 counts of the indictment
7 against him.

8 THE COURT: Is that the government's understanding,
9 that the defendant is going to plead to the indictment?

10 MR. NAFTALIS: Yes, your Honor.

11 THE COURT: Okay.

12 Mr. Warsame has on prior occasions had an interpreter.
13 He has also addressed himself to counsel and to the court in
14 English.

15 Ms. Chaudhry, do you want anything on the record with
16 respect to your client's need for a Somali interpreter? I note
17 none is present.

18 MS. CHAUDHRY: Your Honor, Mr. Warsame has been able
19 to communicate with me without an interpreter. He is fluent in
20 English and does not require, nor asks, for one today.

21 THE COURT: Thank you, Ms. Chaudhry.

22 BY THE COURT:

23 Q. Mr. Warsame, good afternoon, sir.

24 A. Good afternoon, your Honor.

25 Q. I want to tell you -- first of all, you may have a seat.

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1 Until the very end of these proceedings you may remain seated.
2 I will tell you when you should stand.

3 MS. CHAUDHRY: Your Honor, before we go further, I
4 just wanted to let the court know that he is fluent in English
5 but I have I have let Mr. Warsame know that if there is a word
6 that you use that he doesn't know he will ask me and I will
7 explain it to him.

8 THE COURT: Okay.

9 BY THE COURT:

10 Q. First of all, Mr. Warsame, I want to explain something to
11 you. This is not a trial. This is what we call a hearing.
12 It's a proceeding that we are holding because Ms. Chaudhry and
13 the lawyers for the government have said to me that you are
14 prepared today to enter a plea of guilty to the 9 counts that
15 are charged against you in a formal charging document called an
16 indictment.

17 I have to satisfy myself in my own mind that you
18 understand what your rights are and that if you decide you want
19 to plead guilty, you are giving up those rights of your own
20 free will. I have to satisfy myself on these points and that
21 is why we are having this hearing.

22 Do you understand what I just said to you?

23 A. Yes, your Honor, I understand all of my rights.

24 Q. Well, I am going to tell you all of your rights so you can
25 be sure you understand them. But the first thing you need to

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1 understand is that you have a right to understand everything
2 that is going on in this courtroom. So if I say something and
3 you don't understand what I am saying please stop me and talk
4 to Ms. Chaudhry and we will see what we have to do in order to
5 proceed, okay?

6 A. Okay.

7 Q. Thank you.

8 The first right you have is the right to an attorney,
9 to the services of a lawyer, to someone to represent you.
10 Today, yesterday, tomorrow, as long as this court case exists,
11 you have the right to a lawyer. Ms. Chaudhry is your lawyer
12 and you have the right to talk to her at any time during these
13 proceedings. So if you want to talk to her, you stop me, say I
14 want to talk to Ms. Chaudhry, and you can do that.

15 Do you understand?

16 A. Yes, I understand, your Honor.

17 Q. Okay.

18 THE COURT: Ms. Chaudhry, you are, I believe,
19 appointed.

20 MS. CHAUDHRY: I am, your Honor.

21 THE COURT: Correct, since I appointed you.

22 BY THE COURT:

23 Q. So I need to tell you, Mr. Warsame, that if you were not
24 happy with Ms. Chaudhry's services, and this is also true of
25 Mr. Ginsberg, who is your lawyer for some other purposes, if

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1 you were not happy with their services, you could tell me so
2 and I would ask some questions and if I thought there was a
3 problem I would appoint a new lawyer to represent you without
4 charge.

5 Do you understand that?

6 A. Yes, your Honor.

7 Q. Okay.

8 Are you satisfied with the services that Ms. Chaudhry
9 has provided you with until this date?

10 A. Yes, your Honor.

11 Q. Thank you.

12 Okay. This is Mr. O'Neill. Mr. O'Neill is going to
13 ask you to raise your right hand and to swear or to affirm that
14 you will tell the truth here in court answering my questions.

15 Mr. O'Neill.

16 (Defendant sworn)

17 BY THE COURT:

18 Q. Okay.

19 Mr. Warsame, if you lie to me during these
20 proceedings, if you lie to me, if you tell me something that is
21 not true, the government can charge you with the crime of
22 perjury, lying under oath. And I can send you to prison or the
23 judge in that case can send you to prison for 5 years for lying
24 to me or fine you \$250,000 for lying to me. And that is
25 totally separate and apart from the crimes we are going to be

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1 talking about today.

2 Do you understand?

3 A. Yes, your Honor.

4 Q. Mr. Warsame, what is your full name?

5 A. Your Honor, my full name is Ahmed Abdulkadir Warsame.

6 Q. Ahmed Abdulkadir Warsame?

7 A. Yes, your Honor.

8 Q. Have you also been known from time to time by the name
9 Khatab?

10 A. Yes, your Honor.

11 Q. By the name Farah?

12 A. Yes, your Honor.

13 Q. By the name Abdik Haleem Mohammed Farah?

14 A. Yes, your Honor.

15 Q. By the name Fareh Jamah Ali Mohammed?

16 A. Yes, your Honor.

17 Q. How old are you, sir?

18 A. I am 25 years old now.

19 Q. You obviously understand the English language. Do you read
20 any English?

21 A. Yes, your Honor, I write, read and understand very good
22 English.

23 Q. Thank you, sir. You do speak English very well.

24 What is your highest level of education?

25 A. I spent 6 years studying until I reached college in the

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1 United Kingdom.

2 Q. So college level in the United Kingdom?

3 A. Yes, your Honor.

4 Q. Have you ever been put in a hospital for drug or alcohol
5 addiction?

6 A. No, your Honor.

7 Q. Have you taken any kind of drugs or medicine or ingested
8 any alcohol in the last 24 hours?

9 A. Are you on any medicines? Are they giving you any
10 medicines in the prison?

11 A. I have an injury in my lungs and the doctors in the MCC
12 prescribe me some medicines, yes, your Honor.

13 Q. Do you know what the medicines are?

14 A. They said it's painkillers and stomach pain, and also they
15 prescribe me antidepressant tablets, but I did not use it.

16 Q. You have not used the antidepressant?

17 A. No, your Honor.

18 Q. You have used the medicine for the stomach pain?

19 A. Yes.

20 Q. Does it ever make you dizzy or cloudy in your mind so you
21 can't think clearly?

22 A. No, your Honor.

23 Q. Are you clear in your mind today?

24 A. Yes, your Honor.

25 THE COURT: The court notes that the defendant is

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1 presenting with an absolutely correct demeanor. He is plainly
2 oriented. There is absolutely no sign of any sort of
3 impairment that might have resulted from his use of medication
4 or from anything else for that matter.

5 Now, I have in front of me a letter. The letter is
6 dated yesterday, December 20, 2011. The letter is written on
7 the stationery of the United States Attorney's Office for the
8 Southern District of New York. It is addressed to Ms. Chaudhry
9 and to her co-counsel, Lee Ginsberg. It is a total of 7 pages
10 long and it is signed by Mr. Naftalis and by Jonathan Kolodner,
11 the acting Chief of the Criminal Division of the United States
12 Attorney's Office. I have been given the original of this
13 letter as well.

14 Do you have a copy of this letter, Ms. Chaudhry, that
15 you and your client can use?

16 MS. CHAUDHRY: Yes, your Honor.

17 BY THE COURT:

18 Q. Mr. Warsame, I am looking at this letter and on the last
19 page of the letter under "agreed and consented to" it says
20 Ahmed Warsame, and the date is put in 12/21/2011.

21 Sir, did you put your name on that page?

22 A. Yes, your Honor.

23 Q. You wrote it with your own hand?

24 A. Yes, the date and the name.

25 Q. The date and the name, okay.

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1 THE COURT: Ms. Chaudhry, did you also sign this
2 letter?

3 MS. CHAUDHRY: Yes, I did, your Honor.

4 THE COURT: Thank you, Ms. Chaudhry.

5 BY THE COURT:

6 Q. Let's talk about this letter. This letter is an agreement
7 between you and the United States government personified in the
8 Department of Justice, the United States Attorney's Office,
9 which is the prosecutor in this case.

10 The first thing you need to understand is my signature
11 is not on this letter. I had nothing to do with preparing it.
12 Until I was handed it I didn't know what was in it and I am not
13 a party to it, which means I am not bound by anything in this
14 letter.

15 Do you understand that?

16 A. Yes, your Honor.

17 Q. I know that may seem a little strange, but that is the way
18 things work here so I just wanted you to be clear that it's an
19 agreement between you and the folks at the front table but not
20 an agreement between you or them and me.

21 Do you understand that?

22 A. Yes, your Honor.

23 Q. Let's talk about the letter. The letter outlines the
24 charges against you. I need to tell you on the record what
25 those charges are, even though you know what they are. I

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1 assume, by the way, you went over this letter with Ms. Chaudhry
2 before you signed it, didn't you?

3 A. Yes, your Honor.

4 Q. Every single page of it?

5 A. Yes, your Honor.

6 Q. And did you have a lot of opportunity, enough opportunity,
7 to ask her about the letter and what you are proposing to do
8 today?

9 A. Yes, your Honor.

10 Q. And are you satisfied you have had enough time to talk to
11 her and to consider whether or not to sign this letter and to
12 take a plea?

13 A. Yes, your Honor.

14 Q. Okay.

15 The record should reflect that Counts 1 and 2 of the
16 indictment, 11 Cr. 559, charge Mr. Warsame with a violation of
17 of 18, United States Code, Section 2339(b) in connection with a
18 conspiracy to provide, and provision of, and the aiding and
19 abetting of provision of material support to an organization
20 known as al Shabaab, from in or about 2007 up to in or about
21 April 2011, causing death. Each of Counts 1 and 2 carries a
22 maximum sentence of life imprisonment, a maximum lifetime term
23 of supervised release, a maximum fine of the greater of
24 \$250,000 or twice the gross pecuniary gain derived from the
25 offense or twice the gross pecuniary loss to a person other

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1 than the defendant as a result of the offense, and a mandatory
2 \$100 special assessment.

3 Count 3 charges the defendant with using, carrying and
4 possessing firearms, namely, an AK-47 semi-automatic assault
5 weapon, machine guns and destructive devices, and aiding and
6 abetting the same during, and in relation to, and in
7 furtherance of the crimes of violence that are charged in
8 Counts 1 and 2 in violation of 18, United States Code, Section
9 924(c). This charge carries a statutory maximum sentence of
10 lifetime imprisonment with a mandatory minimum term of 30 years
11 imprisonment -- and the sentence on this count must be imposed
12 consecutive to any other term of imprisonment -- a maximum term
13 of supervised release of 5 years, a maximum fine of the greater
14 of \$250,000 or twice the gross pecuniary gain to the defendant
15 or loss to identifiable victims other than the defendant, and a
16 mandatory \$100 special assessment.

17 Counts 4 and 5 charge the defendant with violating 18,
18 United States Code, Section 2339(b) in connection with a
19 conspiracy to provide, the provision of, and the aiding and
20 abetting of the provision of material support to an
21 organization known as AQAP, al-Qaeda in the Arabian Peninsula,
22 from in or about 2009 up to and including in or about 2011.
23 Each of these counts carries a statutory maximum sentence of 15
24 years imprisonment, a maximum term of lifetime supervised
25 release, a maximum fine of the greater of \$250,000 or twice the

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1 gross pecuniary gain to the defendant or loss to identifiable
2 victims other than the defendant, and a mandatory \$100 special
3 assessment.

4 Count 6 charges the defendant with using, carrying and
5 possessing firearms, once again an AK-47 semi-automatic assault
6 weapon, machine guns, grenades and ammunition, and aiding and
7 abetting the same during and in relation to and in furtherance
8 of the crimes charged in Counts 4 and 5, which are crimes of
9 violence in violation of 18, United States Code, Section
10 924(c).

11 Count 6 carries a statutory maximum sentence of
12 lifetime imprisonment, a mandatory minimum term of 30 years
13 imprisonment, which must be imposed consecutive to any other
14 term of imprisonment, and upon conviction of both Count 3 and
15 Count 6 a mandatory minimum term of lifetime imprisonment, a
16 maximum term of supervised release of 5 years, a maximum fine
17 of the greater of \$250,000 or twice the gross gain to the
18 defendant or loss to identifiable victims other than the
19 defendant, and a mandatory \$100 special assessment.

20 Count 7 charges the defendant with conspiring to teach
21 and demonstrate the making of explosives in violation of 18,
22 United States Code, Sections 842(p) and 844(n). This charge
23 carries a maximum sentence of 20 years imprisonment, a maximum
24 term of supervised release of 3 years, a maximum fine of the
25 greater of \$250,000 or twice the gross gain to the defendant or

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1 loss to identifiable victims other than the defendant, and a
2 mandatory \$100 special assessment.

3 Count 8 charges the defendant with conspiring to
4 receive military-type training from a foreign terrorist
5 organization in violation of 18, United States Code, Sections
6 2339D and 371. This charge carries a statutory maximum
7 sentence of 5 years imprisonment, a maximum term of supervised
8 release of 3 years, a maximum fine of the greater of \$250,000
9 or twice the gross pecuniary gain derived from the offense to
10 the defendant or loss to identifiable victims other than the
11 defendant, and a mandatory \$100 special assessment.

12 And, finally, Count 9 charges the defendant with
13 receiving military-type training from a foreign terrorist
14 organization and aiding and abetting such training in violation
15 of 18, United States Code, Section 2339D. This carries a
16 maximum sentence of ten years imprisonment, a maximum term of
17 lifetime supervised release, a maximum fine pursuant to Title
18 18, United States Code, of the greater of \$250,000 or twice the
19 gross pecuniary gain derived from the offense to the defendant
20 or the gross pecuniary loss to persons other than the
21 defendant, and a mandatory \$100 special assessment.

22 Mr. Warsame, the total maximum sentence if you were
23 convicted on all of the foregoing counts is life imprisonment.
24 If you you were convicted of all of the foregoing counts the
25 mandatory minimum term of imprisonment is life imprisonment. I

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1 understand that there are forfeiture allegations as well with
2 respect to Counts 1, 2, 4, 5, 7, 8 and 9, and that the
3 defendant has agreed to forfeit to the United States all right,
4 title and interest in all assets, foreign and domestic, derived
5 from, involved in, and used, and intended to be used, to commit
6 a federal crime of terrorism against the United States,
7 citizens and residents of the United States, and their
8 property. It being further understood that any forfeiture of
9 the defendant's assets shall not be treated in satisfaction of
10 any fine, restitution, cost of imprisonment or any other
11 financial penalty that the court may impose upon him in
12 addition to forfeiture.

13 Now, why have I read all those things to you when you
14 already went over them with Ms. Chaudhry? Well, the answer to
15 that question, Mr. Warsame, is I want to be sure that you heard
16 them and that you know what is the worst I can do to you if you
17 decide to plead guilty.

18 Do you understand what I have just gone through and
19 summarized for you?

20 A. Yes, your Honor.

21 Q. And have you discussed that with Ms. Chaudhry?

22 A. Yes, your Honor.

23 Q. Is this agreement, this letter that you signed today, is
24 that the entire agreement and understanding that you have with
25 the government?

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1 A. Yes, your Honor.

2 Q. You need to understand that if there are any like secret
3 sides deals that aren't written down here, then I don't have to
4 take them into account when I ultimately decide your fate, when
5 I decide how to sentence you.

6 Do you understand that?

7 A. Yes, your Honor.

8 THE COURT: Are there any secret side deals of which I
9 should be aware, Mr. Naftalis?

10 MR. NAFTALIS: No, your Honor.

11 THE COURT: Ms. Chaudhry?

12 MS. CHAUDHRY: No, your Honor.

13 BY THE COURT:

14 Q. Mr. Warsame, when you signed this letter earlier today did
15 you do it of your own free will?

16 A. Yes, your Honor.

17 Q. Did anyone threaten you or coerce you? Did anyone put a
18 gun to your head? Did anyone say, "I am going to do something
19 bad to your family unless you sign this letter?" Did anyone
20 say or do anything like that to get you to sign this letter?

21 A. No, your Honor.

22 Q. All right.

23 Now, the offenses that are in the letter, and we have
24 already gone over the possible punishments for those offenses,
25 they are what we call felonies. Felony means serious crime.

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1 If you plead guilty to felonies you will lose, under our system
2 of laws, certain civil rights. If you were a citizen you would
3 lose the right to vote, and the right to hold public office,
4 and the right to serve on a jury. Whether you are a citizen or
5 not, you lose the right to possess any type of firearm or
6 destructive device and the right to possess or obtain certain
7 professional licenses.

8 Do you understand that?

9 A. Yes, your Honor.

10 Q. I take it, sir, that you are not an American citizen, is
11 that correct?

12 A. Yes, your Honor.

13 Q. So if you are found guilty of a felony by plea or
14 otherwise, it will have an adverse impact on your immigration
15 status and on any application that you may have pending or that
16 you may wish to make in the future for permission to remain in
17 the United States or to become a United States citizen.

18 Do you understand that?

19 A. Yes, your Honor.

20 Q. I understand that there is in this letter agreement with
21 the government some discussion at the bottom of page 6 and the
22 top of page 7 concerning the fact that the guilty plea makes it
23 very likely that the defendant will be deported from the United
24 States and that the defendant had discussed the possible
25 immigration consequences, including deportation, of his guilty

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1 plea and conviction with defense counsel.

2 Did you, in fact, talk about those things with Ms.
3 Chaudhry?

4 A. Yes, your Honor.

5 THE COURT: Ms. Chaudhry, did you discuss the
6 immigration consequences of a plea with your client?

7 MS. CHAUDHRY: I did, your Honor.

8 THE COURT: Okay.

9 BY THE COURT:

10 Q. Let me take a sip of water. Now, we will go on.

11 Now, I have told you what the possible punishments are
12 if you plead guilty to the crimes charged in the indictment.
13 This is an unusual case, the first in my experience, because by
14 law if you were to plead guilty to all the crimes that are
15 charged in the indictment, which is what I understand you are
16 planning to do, the minimum sentence that I can give you is
17 lifetime in prison, which is also the maximum sentence that I
18 can give you. That is what we call the guideline range.

19 THE COURT: And because of that I think it's not
20 necessary to explain to the defendant the Sentencing Guidelines
21 and the calculation of the guidelines. The mandatory minimum
22 is life imprisonment if the defendant pleads guilty to Counts 3
23 and 6, is that not correct, Mr. Naftalis?

24 MR. NAFTALIS: That is correct, your Honor.

25 THE COURT: Right, okay.

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1 BY THE COURT:

2 Q. So there is no guideline to be computed. The guideline is
3 a mandatory minimum by law and the mandatory minimum is life.

4 Do you understand that?

5 A. Yes, your Honor.

6 Q. Now, I know it says mandatory minimum and "mandatory" means
7 it has to be. There is no way out. But there is, of course, a
8 way out of a mandatory minimum sentence and that has to do with
9 whether the government at some point in time comes to me as the
10 judge and makes an application, a motion, to have you sentenced
11 without regard to the mandatory minimum. The law passed by
12 Congress gives the government the right to do that if you
13 provide substantial assistance to the government.

14 Do you understand that?

15 A. Yes, your Honor.

16 Q. In our law we used to have something called parole when
17 defendants were assessed and sometimes they could be released
18 before the end of their sentences, and that was gotten rid of
19 some years ago. It was abolished.

20 So do you understand that you will never be eligible
21 for early release on parole?

22 A. Yes, your Honor.

23 Q. Now, some day the day is going to come when I am going to
24 sentence you. Whether I sentence you to life imprisonment or
25 something less than life imprisonment, depends on things that

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1 will happen after today between you and the government in the
2 conduct of other investigations and cases.

3 In the end, I am going to have to make a decision
4 about what your punishment should be. And you need to
5 understand that if you plead guilty today and some day in the
6 future I say this is your punishment, this is your sentence,
7 and you don't like what I say, that doesn't mean you can stand
8 up and say, Judge, now I want to go to trial. I don't want to
9 plead guilty anymore.

10 Do you understand that?

11 A. Yes, your Honor.

12 Q. Ahmed Abdulkadir Warsame, do you understand that you do not
13 have to plead guilty in this matter? You have an absolute
14 right to plead not guilty and to have this matter tried either
15 to a judge or to a jury of 12 people?

16 A. Yes, your Honor.

17 Q. Do you understand that if you decide you want to plead not
18 guilty, you are entitled to a speedy and public trial of your
19 case?

20 A. Yes, your Honor.

21 Q. At any trial do you understand that you would be entitled
22 to the presumption of innocence and that the presumption would
23 remain with you until such time as the government proved each
24 and every element of the crimes with which it has charged you
25 beyond a reasonable doubt to the satisfaction of the trier of

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1 fact?

2 A. Yes, your Honor.

3 Q. Do you understand that at such a trial you would have the
4 right to confront and cross examine -- with the assistance of
5 your attorney -- witnesses who were called against you? You
6 would have the right to call witnesses to testify for you. You
7 would have the right to have me sign subpoenas, documents that
8 compel, that force people to come to court and give testimony
9 on your behalf, and you would have the right to testify at any
10 trial, but you could not be forced to to testify, and if you
11 chose not to testify, no unfavorable inference would be drawn
12 against you because of your choice.

13 Do you understand that?

14 A. Yes, your Honor.

15 Q. Finally, at such a trial you would have the right, that I
16 spoke of before, to the assistance of an attorney and to have
17 an attorney appointed to represent you without fee if you could
18 not afford a lawyer.

19 Do you understand that?

20 A. Yes, your Honor.

21 Q. Mr. Warsame, do you understand that if you plead guilty to
22 the charges that we have discussed today that are contained in
23 the indictment and that are outlined in this letter that you
24 signed this afternoon, you are giving up your right to a trial
25 and, except for the right to continue to be represented by a

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1 lawyer, you are also giving up all of the other rights that I
2 just explained to you?

3 A. Yes, your Honor. I understand.

4 Q. Mr. Warsame, has anyone threatened you or coerced you or
5 put any kind of improper pressure on you in order to get you to
6 change your plea?

7 A. No, your Honor.

8 Q. Has anyone made any promises to you except what the
9 government promised in this letter agreement, the letter of
10 December 20, 2011, in order to get you to change your plea?

11 A. No, your Honor.

12 Q. Has anyone told you Judge McMahon is going to sentence you
13 to any specific amount of time if you change your plea?

14 A. No, your Honor.

15 Q. The court states that it has made no promises with respect
16 to sentencing.

17 THE COURT: Mr. Naftalis, what is the government
18 prepared to prove at trial?

19 MR. NAFTALIS: Your Honor, would you like me to go
20 through all the counts at this time?

21 THE COURT: I think it's probably easier -- well, Ms.
22 Chaudhry, you tell me how you would prefer toto to proceed.
23 Would you like to go through these one count at a time or would
24 you prefer to have Mr. Naftalis do them all and then let your
25 client allocute to all of them?

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1 MS. CHAUDHRY: He should go through all of them and
2 then we can go through all of them.

3 THE COURT: Thank you.

4 Mr. Naftalis, I will hear you on all counts.

5 MR. NAFTALIS: As to Counts 1 and 4, which charge a
6 violation of 18 U.S.C. 2339B, and that is conspiracy to provide
7 material support to al Shabaab in Count 1 and AQAP in Count 4,
8 the government would have to prove beyond a reasonable doubt,
9 first, that the defendant agreed with more than one person to
10 provide material support and resources to an organization;

11 2. That that organization had, in fact, been
12 designated as a terrorist organization pursuant to Section 219
13 of the INA; and,

14 3. That the defendant knew that that organization
15 had, in fact, been designated as such or that the organization
16 engages in or has engaged in terrorist activity or terrorism.
17 In addition, as to Count 1, which charges the death of others,
18 we would have to prove that the conduct caused the actual death
19 of another person.

20 As to Counts 2 and 5, which charge -- 18 U.S.C.
21 2339B -- the actual providing of material support, the
22 government would have to prove, first, that the defendant
23 knowingly provided material support and resources to an
24 organization;

25 2. That that organization had been designated as a

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1 foreign terrorist organization under the INA; and,

2 3. That the defendant knew that the organization had,
3 in fact, been designated as such or engaged in such acts of
4 terrorism or terrorist activities. And, 4, as to Count 2, that
5 death was caused.

6 As to Counts 3 and 6, which are the 924(c) counts, the
7 government would have to prove, first, that the defendant
8 committed a crime of violence for which he might be prosecuted
9 in a U.S. court;

10 2. That the defendant knowingly used and carried a
11 firearm during and in relation to the commission of, or
12 knowingly possessed a firearm in furtherance of the crime
13 charged; and,

14 3. That the firearm in question included a
15 destructive device or machine gun.

16 As to Count 7, the 844(n) count, the government would
17 have to prove, first, that the defendant agreed with more than
18 one person to teach or demonstrate the making and use of
19 explosives, destructive devices, and weapons of mass
20 destruction; or,

21 2. That he agreed to distribute information
22 pertaining to the manufacture and use of such weapons;

23 3. That the conspirators, including Warsame, intended
24 that the teaching, demonstration and information be used for,
25 and in furtherance of, a federal crime of violence.

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1 Count 8, which is a 371 count related to military-type
2 training, the government would have to prove, first, that the
3 defendant agreed with more than one person to receive
4 military-type training from and on behalf of a designated
5 organization.

6 2. That the defendant knowingly and intentionally
7 became a member of that organization; and,

8 3. That at least one member or co-conspirator took an
9 act to effect the object of that conspiracy.

10 Count 9, which is the 2339D count, the government
11 would have to prove, first, that the defendant knowingly
12 received military-type training from and on behalf of an
13 organization;

14 2. At the time he received the training, the
15 organization was designated as such as an FTO; and,

16 3. That the defendant knew that the organization was
17 designated or that it engages in or had engaged in terrorism or
18 terrorist activity.

19 THE COURT: Thank you, Mr. Naftalis.

20 BY THE COURT:

21 Q. Mr. Warsame, do you still think that you want to plead
22 guilty to the crimes that the government has charged you with?

23 A. Yes, your Honor.

24 Q. In that case I need for you to tell me what it is that you
25 did to commit those crimes. I understand that you and Ms.

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1 Chaudhry have prepared a statement and I am prepared to listen
2 to that at this time.

3 A. Your Honor, Counts 1, 2 and 3: From 2007 until April 2011,
4 in Somalia and Yemen, I knowingly conspired with others,
5 including American citizens, to provide material support to al
6 Shabaab, which I knew is listed as a foreign terrorist
7 organization. Further, I provided material support to al
8 Shabaab by fighting as a soldier on behalf of al Shabaab, and I
9 possessed and used weapons, including a machine gun and
10 automatic weapons, in my role as a soldier for al Shabaab. I
11 joined al Shabaab to fight the Ethiopian invasion of my native
12 country, Somalia. As a result of my participation in this
13 conspiracy, at least one person died in Somalia.

14 Q. Let me stop you there for one moment.

15 Does the government know of any other information that
16 I should receive from Mr. Warsame before I can accept his
17 allocution on Counts 1, 2 and 3?

18 MR. NAFTALIS: No, your Honor.

19 THE COURT: Do you, Ms. Chaudhry?

20 MS. CHAUDHRY: No, your Honor.

21 THE COURT: Thank you.

22 BY THE COURT:

23 Q. Go on please.

24 A. Counts 4, 5 and 6: From 2009 to April 2011, in Somalia and
25 Yemen, I knowingly conspired with others, including American

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1 citizens, to provide material support to al-Qaeda in the
2 Arabian Peninsula, which I knew is listed as a foreign
3 terrorist organization. I provided material support by
4 arranging for al Shabaab to buy weapons from al-Qaeda in the
5 Arabian Peninsula, and I also received explosives and weapons
6 training from al-Qaeda for al Shabaab's benefit. From 2010 to
7 2011 while in Yemen, I possessed weapons and explosive devices,
8 including a machine gun and automatic weapons, while receiving
9 training from al-Qaeda.

10 Q. Okay.

11 THE COURT: Does the government know of any additional
12 information that I need to elicit from Mr. Warsame with
13 relation to Counts 4, 5 and 6?

14 MR. NAFTALIS: No, your Honor.

15 THE COURT: Ms. Chaudhry, do you?

16 MS. CHAUDHRY: No, your Honor.

17 BY THE COURT:

18 Q. You may continue, sir.

19 A. Your Honor, Count 7: From 2010 to 2011, in Yemen, I
20 knowingly conspired with others to teach and demonstrate the
21 making of explosives and destructive devices. Specifically,
22 members of al-Qaeda in the Arabian Peninsula taught me about
23 explosives and destructive devices. I was not a member of
24 al-Qaeda and I did this for al Shabaab's benefit, intending to
25 share what I learned and the materials I gathered when I

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1 returned to Somalia.

2 THE COURT:: Does the government know of any
3 information that I need to elicit additionally from Mr. Warsame
4 with respect to Count 7?

5 MR. NAFTALIS: I think that is fine, your Honor.
6 Thank you.

7 THE COURT: Ms. Chaudhry, anything?

8 MS. CHAUDHRY: No, your Honor.

9 BY THE COURT:

10 Q. Sir, you may continue.

11 A. Counts 8 and 9: From 2010 to 2011, in Yemen, I knowingly
12 conspired with others to receive military-type training from
13 al-Qaeda on behalf of al Shabaab. Specifically, members of
14 al-Qaeda taught me about explosives and destructive devices,
15 and also gave me other military training, such as topography.
16 I was not a member of al-Qaeda and I did this to support al
17 Shabaab.

18 THE COURT: Does the government know of anything else
19 I need to elicit with respect to Counts 8 and 9?

20 MR. NAFTALIS: The only thing I would ask to elicit on
21 Count 8 is that the defendant conspired with at least one other
22 U.S. citizen or who he believed to be a U.S. citizen.

23 BY THE COURT:

24 Q. Were any of the people that you knowingly conspired with
25 American citizens?

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1 You can talk to Ms. Chaudhry.

2 A. Thank you, your Honor.

3 (Pause)

4 MR. NAFTALIS: Your Honor, may we have a moment?

5 THE COURT: Yes, absolutely.

6 (Pause)

7 THE COURT: We are going back on the record.

8 A. Your Honor, in Counts 8 and 9 --

9 MS. CHAUDHRY: I think he lost his place. He was
10 going to repeat his allocution. I think the government's
11 questions were American citizens involved in Counts 8 and 9 to
12 conspire with American citizens.

13 A. Yes, the conspiracy was also in Yemen and Somalia.

14 Q. It was in Yemen and Somalia but were any American citizens
15 in the group of people that you conspired with?

16 A. Yes, your Honor.

17 Q. That is what we needed. Okay, thank you.

18 THE COURT: Anything else you think needs to be
19 elicited, Ms. Chaudhry?

20 MS. CHAUDHRY: No, your Honor.

21 BY THE COURT:

22 Q. Mr. Warsame, these things that you have just told me that
23 you did, did you do all of them of your own free will?

24 A. Yes, your Honor.

25 Q. And you have admitted to when and where you committed these

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1 acts.

2 THE COURT: Ms. Chaudhry, do you know of any reason
3 why I should not accept a plea of guilty from your client to
4 each and every count in the indictment?

5 MS. CHAUDHRY: I do not, your Honor.

6 THE COURT: Mr. Naftalis, does the government know of
7 any reason why I should not accept a plea of guilty from Mr.
8 Warsame to each and every count in the indictment?

9 MR. NAFTALIS: No, your Honor.

10 THE COURT: And can either of you think of anything
11 that I haven't covered?

12 MR. NAFTALIS: Your Honor, in an abundance of caution,
13 as to the guidelines your Honor correctly noted that the
14 guidelines is a moot point here, but I would only ask that you
15 advise the defendant that at sentencing a PSR will be prepared
16 in connection with that sentencing.

17 THE COURT: Just so you know, Mr. Warsame, I told you
18 I will be the one who decides who your sentence is to the
19 extent that I am able to do so consistent with the law, and
20 before I make up my mind a probation officer will talk to you
21 and to Ms. Chaudhry, with Mr. Ginsberg, to the government, to
22 the FBI, and she or he will prepare a big report about you so
23 that I know who you are and what you have done, and lots of
24 things about you. And you will get to see that report, and Ms.
25 Chaudhry will get to see that report before I see it, and you

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1 will get a chance to tell the probation officer to make
2 corrections to the report, and so will the government, and all
3 of that will happen, and then the document will come to me, so
4 I will have all that information before I make up my mind about
5 the sentence. And I will also listen to the government before
6 I make up my mind. And I will listen to Ms. Chaudhry make
7 arguments to me before I make up my mind, arguments on your
8 behalf. I will listen to you. You can talk to me before I
9 make up my mind on the sentence.

10 Do you understand that all of that?

11 THE DEFENDANT: Yes, your Honor, I do.

12 THE COURT: Anything else, Mr. Naftalis?

13 MR. NAFTALIS: In an abundance of caution, your Honor,
14 only that the defendant has reviewed the indictment and the
15 charges with his counsel with the aid of an interpreter, if
16 necessary.

17 THE COURT: Why didn't we do that at the beginning,
18 Mr. Naftalis?

19 MR. NAFTALIS: This is the first opportunity I had.

20 THE COURT: You can always jump up, Mr. Naftalis.

21 MR. NAFTALIS: I am very shy.

22 THE COURT: It's not in your jeans.

23 BY THE COURT:

24 Q. Did Ms. Chaudhry go over the actual indictment, the
25 document that charged you with the crime? Did she go over that

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1 with you?

2 A. Yes, your Honor.

3 Q. And did you have the opportunity to talk with her through
4 an interpreter if you needed to do that?

5 A. No, I didn't have an interpreter.

6 Q. Is that because you didn't want an interpreter?

7 A. Because my understanding is very good and I didn't need it.

8 Q. I really think that if Mr. Warsame has established anything
9 beyond a reasonable doubt to the satisfaction of today's trier
10 of fact, who is the court, he has established that he is quite
11 fluent in the English language. And I will note for the record
12 that Mr. Warsame had before him an allocution, a written
13 allocution, and that when he found a typographical error in it,
14 and it's written in English, he corrected it. I should be so
15 lucky with many of my native-born American defendants.

16 Ahmed Abdulkadir Warsame, how do you plead to Count 1,
17 conspiracy to provide material support to al Shabaab, guilty or
18 not guilty?

19 A. Guilty, your Honor.

20 Q. How do you plead to Count 2, providing material support to
21 al Shabaab, guilty or not guilty?

22 A. Guilty, your Honor.

23 Q. How do you plead to Count 3, possessing, carrying and using
24 a firearm and destructive device in connection with Counts 1
25 and 2, guilty or not guilty?

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1 A. Guilty, your Honor.

2 Q. How do you plead to Count 4, conspiracy to provide material
3 support to al-Qaeda in the Arabian Peninsula, guilty or not
4 guilty?

5 A. Guilty, your Honor.

6 Q. How do you plead to Count 5, providing material support to
7 al-Qaeda in the Arabian Peninsula, guilty or not guilty?

8 A. Guilty, your Honor.

9 Q. How do you plead to Count 6, possessing, carrying and using
10 a firearm and destructive device in respect of the crimes
11 charged in Counts 4 and 5, guilty or not guilty?

12 A. Guilty, your Honor.

13 Q. How do you plead to Count 7, conspiracy to teach and
14 demonstrate the making of explosives, guilty or not guilty?

15 A. Guilty, your Honor.

16 Q. How do you plead to Count 8, conspiracy to receive
17 military-type training from a foreign terrorist organization,
18 guilty or not guilty?

19 A. Guilty, your Honor.

20 Q. And how do you plead to Count 9, receipt of military
21 training from a foreign terrorist organization, guilty or not
22 guilty?

23 A. Guilty, your Honor.

24 THE COURT: Upon this allocution I find that the
25 defendant is fully competent and capable of entering an

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1 informed plea. The plea is knowing and voluntary and is
2 supported by independent factual basis for each and every
3 element of the crime charged in the indictment. Accordingly,
4 the defendant is adjudicated guilty of Counts 1, 2, 3, 4, 5, 6,
5 7, 8 and 9 as charged in indictment number 11 Cr. 559.

6 You may be seated, sir.

7 THE DEFENDANT: Thank you, your Honor.

8 THE COURT: Now, I am obviously not going to direct
9 that a presentence investigation be conducted at this time.
10 Eventually we will get there and eventually there will be a
11 presentence investigation and I have explained that process to
12 Mr. Warsame already.

13 Now, it should be understood, I was advised before
14 this proceeding, and I perceived that during the proceeding no
15 SEPA information is contained in the transcript of this
16 proceeding, so when we are able to unseal, the entire
17 transcript will be unsealed.

18 Is that the government's understanding, Mr. Naftalis?

19 MR. NAFTALIS: It is.

20 THE COURT: Ms. Chaudhry?

21 MS. CHAUDHRY: Yes, your Honor.

22 THE COURT: Okay.

23 Counsel, thank you very much.

24 Mr. Warsame, thank you very much.

25 These proceedings are closed.